

GETTYSBURG BOROUGH ZONING HEARING BOARD

IN RE: APPLICATION OF LA BELLA ITALIA GETTYSBURG, LLC
Property at 412 York Street, Gettysburg, Pennsylvania

DECISION MEMORANDUM

The Gettysburg Borough Zoning Hearing Board ("Board") convened a hearing to consider the application of La Bella Italia Gettysburg, LLC ("Applicant"), to obtain a variance from the Borough of Gettysburg ("Borough") Zoning Ordinance Chapter 27 ("Ordinance") Section 1304.2, Location of Parking, at 412 York Street, Borough of Gettysburg, Adams County, Pennsylvania ("Property"). The Property is in a General Commercial (GC) District and within the Historic District and the Streetscape Overlay District.

The application was heard Wednesday, July 25, 2018, at 7:00 p.m. prevailing time in the Borough Council Chambers at the Gettysburg Municipal Building, 59 East High Street, Gettysburg, Pennsylvania. Written notice of the hearing was given in accordance with law and procedures of the Board by publication in *The Gettysburg Times*; posting; and U.S. first-class mail to all interested parties as indicated to the Borough.

Present for the hearing were Stacey Green, Board Chair, and Board members Rodger Goodacre, Larry Weikert, Darlene Brown and John Butterfield, constituting a quorum. Also present were Rebecca Young LaBarre, Borough Planning Director and Zoning Officer, and John S. Phillips, Board Solicitor. Corrie L. Ondrizek, Court Reporter, was the Stenographer.

John J. Murphy, III, Esquire, appeared for Applicant. Giovanni Cucuzza, member of La Bella Italia Gettysburg, LLC, and Robert A. Sharrah, PLS, Sharrah Design Group, Inc. testified on behalf of Applicant.

No members of the public attended the hearing.

FINDINGS OF FACT

1. La Bella Italia Gettysburg, LLC is the title owner of the Property, also known as Tax Parcel ID 16008-0039---000.
2. The Property is located within a General Commercial (GC) Zoning District, within the Historic District and subject to the Streetscape Overlay District.

3. Applicant purchased the Property on or about May 10, 2017.
4. Prior to the purchase by Applicant, the use of the Property was residential, with an existing two-story dwelling, a garage located on the rear (north) and west side property lines, and a gravel parking area on the rear and east side property lines.
5. The Property is narrow, approximately 48.87 feet wide with no on-street parking along its street frontage. The Property was subdivided prior to the enactment of a zoning ordinance in the Borough.
6. The neighboring properties are a mix of commercial, professional and residential uses, trending toward commercial and professional uses and away from residential uses.
7. Applicant proposes to convert the existing dwelling into an extension of its current restaurant at 402 York Street. Restaurant is a permitted use in a GC District.
8. To add parking for the expanded restaurant Applicant proposes to construct a porous paving area at the rear of the Property along Furniture Alley.
9. Applicant seeks a variance to reduce the required ten-foot side yard along the eastern boundary line to three feet to allow two rows of parking, increasing the available parking spaces from four to eight.
10. Applicant will combine 412 York Street and 402 York Street into one parcel, eliminating the joint boundary line and any required setback along the existing western boundary of the Property.
11. The Borough of Gettysburg Planning Commission, at its July 16, 2018, meeting reviewed the Application and voted unanimously to recommend the requested variance be granted, with no proposed conditions. The Planning Commission expressly found that the proposed relief, if granted, would not alter the essential character of the neighborhood or district in which the Property is located, not substantially or permanently impair the appropriate use or development of the adjacent property, nor be detrimental to the public welfare.

APPLICABLE LAW

1. The burden is on Applicant to provide “substantial evidence” to allow the Board to make its findings. Sadsbury Twp. Zoning Hearing Bd. V. Sadsbury Twp. Bd. Of Supervisors, 804 A.2d 1274 (Pa.Cmwlt. 2002)

2. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. One Meridian Partners, LLP v. Zoning Board of Adjustment of Philadelphia, 867 A.2d 706 (Pa.Cmwlt.2005).
3. For a variance, the Board must find that:
 - a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located;
 - b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 - c. That such unnecessary hardship has not been created by the Applicant;
 - d. That the variance, if authorized, will not alter the essential character of the neighborhood or the district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
 - e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. § 10910.2(a); Ordinance Section 1704(A)
4. To justify the grant of a dimensional variance, courts may consider multiple factors, including the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. To hold otherwise would prohibit the rehabilitation of neighborhoods by precluding an applicant who wishes to renovate a building in a blighted area from obtaining the necessary variances. Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

ANALYSIS

The Board finds that the narrow width of the Property and lack of on street parking along the frontage owned by the Applicant constitute unnecessary hardships for a property located in a General Commercial District, in that very few commercial uses could be made of the Property within the constraint of four parking spaces. The width of the Property predates both the zoning ordinance and Applicant's ownership and were not caused by the Applicant. The Board concurs in the Planning Commission's finding that the variance, if granted, The Planning Commission found that the proposed relief, if granted, will not be detrimental to the neighborhood or district or public welfare. Finally,

testimony confirmed that the seven feet requested is the minimum relief that will provide for a second row of parking with its required drive aisle; no lesser variance will allow for additional parking.

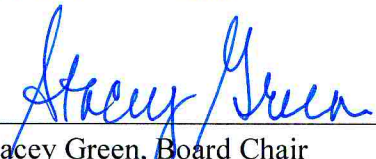
CONCLUSION

During deliberations in public, Ms. Brown moved that the requested variance from Section 27-1304.2, Location of Parking, as stated in the Application, be granted. Mr. Goodacre seconded the motion. By roll call vote the motion passed 5-0.

The application is approved.

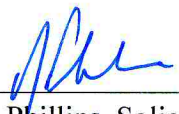
GETTYSBURG BOROUGH ZONING HEARING BOARD

Dated: August 1, 2018



Stacey Green, Board Chair

Dated: August 1, 2018



John S. Phillips, Solicitor I.D. 74461
101 West Middle Street
Gettysburg, PA 17325

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CERTIFICATE OF SERVICE

I certify a true and correct copy of the Decision of the Gettysburg Borough Zoning Hearing Board in the above referenced matter was served on the Borough of Gettysburg by hand delivery and served on Applicant and others by U.S. First Class Mail, postage prepaid (unless otherwise noted) on 1 August, 2018, addressed as follows:

John J. Murphy, III, Esq.
28 West Middle Street
Gettysburg, PA 17325
By hand delivery

Robert A. Sharrah, PLS
20 Chambersburg Street
Gettysburg, PA 17325
By hand delivery



John S. Phillips